Supreme Court, U.S.
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SUPREME COURT OF THE UNITED STATES

DOCKET NUMBER 86-538

ANN HOCKERSMITH
Petitioner

VERSUS

PARTNER PUBLISHING CO., INC., et al
Respondent

On Appeal From the United States District Court,
Middle District of Louisiana, State of Louisiana,
Honorable Frank J. Polozola, Judge Presiding

REPLY BRIEF ON BEHALF OF ANN HOCKERSMITH

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Ann Hockersmith rebuts Flynt Distributing Company, Inc.'s, brief as follows:

ARGUMENT NO. 1

FDC states, "The constitutionality of Rule 50(b) is settled."

Petitioner is **not** arguing the constitutionality of Rule 50(b) when it is applied properly. Here, Rule 50(b) was not applied properly.

Rule 50(b) should be applied only as to **questions of law.** In this case, Rule 50(b) was applied to as **questions of fact.**

Plaintiff does question the constitutionality of Rule 50(b) as to questions of fact.

Whenever a court rules that there is "lack of evidence", (i.e., that the "evidence" preponderates, 51% vs. 49%, or 99% vs. 1%, or even 100% vs. 0%), the court is ruling on the **facts.** The Seventh Amendment **mandates** that the jury decide the **facts.**

Rule 50(b) can constitutionally be applied **only** as to questions of law.

ARGUMENT NO. 2

FDC states that, "This court's decision requires the petitioner to produce clear and convincing proof of actual malice", and that Ann Hockersmith did not.

FDC has been playing Ring Around the Rosy with words in this case.

FDC states, "We are merely distributors", therefore, "we have no duty" to monitor the materials we distribute even if libelous.

If FDC is merely a "distributor", then it is **not** entitled to First Amendment protection, which protects "Freedom of Speech" and "Freedom of the Press". If FDC is merely a "distributor", then it is not "speaking" and it is not "publishing" and, therefore, the First Amendment rights do **not** apply.

FDC cannot have its cake and eat it, too. It cannot claim it is merely a distributor and has nothing to do with publishing the material, and at the same time claim the protection afforded to "speakers" and "publishers" under the First Amendment.

If the First Amendment applies to FDC, then FDC is either "speaking" or "publishing" and, if so, it had to know what it was speaking and had to know what it was publishing. It then stands in the same shoes as a speaker or a publisher. As such, Ann Hockersmith had the material (the two magazines) that it "spoke through" or "published" and they were presented to the jury with her testimony to the fact that the stories were totally fabricated by the imaginations of the writers and publishers and, therefore, Ann Hockersmith did prove **actual malice by clear and convincing** evidence.

CONCLUSION

Flynt Distributing Co., Inc. really did know the content of its magazines, since it had been financing the publishers and distributing the magazines for years.

Respectfully Submitted:

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CERTIFICATE

I hereby certify that three copies of the Reply Brief were mailed, postage prepaid, to Mr. Lawrence Kill (Counsel of Record), 666 Third Avenue, New York, New York, 10017 on 17 October 1986.

ARTHUR COBB